



Billing Code No. 4910-9X

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

**[Docket No. OST-2019-0022]**

### **Privacy Act of 1974; System of Records; Department of Transportation Office of the Secretary - DOT/OST 102- Aviation Consumer Complaint Application Online System of Records**

**AGENCY:** Office of the Secretary of Transportation, DOT.

**ACTION:** Notice of a modified System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the Department of Transportation proposes to update and reissue a current Department of Transportation system of records titled, “Department of Transportation/Office of the Secretary-DOT/OST 102- Aviation Consumer Complaint Application Online System of Records.” This system of records allows the Department of Transportation/Office of the Secretary to collect and maintain records on service-related consumer complaints, inquiries, opinions, and compliments regarding air carriers or air travel companies.

The records and information collected and maintained in this system are used to verify compliance with Department’s aviation consumer protection requirements. The system receives and is used to process informal complaints regarding aviation consumer issues. The Aviation Consumer Complaint Application Online System of Records utilizes the Department’s electronic case management and tracking system to generate reports. It also allows the Department to manage information provided during the course of its investigations and, in the process, to facilitate its management of investigations and investigative resources. Through this system, the

Department can enter, update, review, analyze, and manage information regarding case projects and enforcement elements in addition to the ability to run a variety of reports to better manage tracking current and expiring cases. Furthermore, it allows DOT employees to track actions taken to resolve violations, provide a system for creating and reporting statistical information, and tracking government property and other resources used in investigative activities.

This system of records notice has been updated within the system location, system manager, categories of records in the system, record source categories, routine uses, storage, retrievability, retention and disposal, safeguards, notification procedures, exemptions, and history.

Additionally, the Department of Transportation is issuing a Notice of Proposed Rulemaking to exempt this system of records from certain provisions of the Privacy Act, elsewhere in the Federal Register. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. It also updates the SORN to reflect changes in the heading names and order as required by the reissuance of Circular A-108 by the Office of Management and Budget. This updated system will be included in the Department of Transportation's inventory of record systems.

**DATES:** Written comments should be submitted on or before March 7, 2019. The Department may publish an amended SORN in light of any comments received. This new system will be effective March 7, 2019.

**ADDRESSES:** You may submit comments, identified by docket number OST-2019-0022 by any of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- Fax: (202) 493–2251.

*Instructions:* You must include the agency name and docket number [*insert docket number*]. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act statement in the Federal Register published on April 11, 2000 (65 FR 19477–78), or you may visit <http://DocketsInfo.dot.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact [C70/C75 POC]. For privacy issues please contact: Claire W. Barrett, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, D.C. 20590; [privacy@dot.gov](mailto:privacy@dot.gov); or 202.527.3284.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. § 552a, the Department of Transportation (DOT), Office of the Secretary (OST) proposes to update and reissue a current DOT system of records titled, “DOT/OST 102- Aviation Consumer Complaint Application Online System of Records.” The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Aviation Consumer Protection Division, operates the Aviation Consumer Complaint Application Online System of Records (CCA), which receives and is used to process informal complaints from members of the public regarding aviation consumer protection matters. The primary intent of this revision is to update and clarify parts of the system of records notice to reflect changes in the Department’s organization and programs since its last publication in 2005. Furthermore, the Department is proposing to exempt the CCA from certain provisions of the Privacy Act in accordance with 5 U.S.C. § 552a(k)(2).

This system of records notice (SORN) was previously published in the **Federal Register** on February 25, 2005 (70 FR 9436) and became effective without notice on April 6, 2005. The DOT established the CCA to receive, process, investigate, and monitor consumer comments regarding airlines and air travel companies and to determine the extent to which these entities are in compliance with Federal aviation civil rights and consumer protection regulations. Members of the public, including citizens, legal permanent residents, and visitors, submit inquiries, opinions, compliments, and complaints about airlines and air travel companies. The records contain personal information about individuals, which may include: name, addresses, telephone numbers, email address, reservation information, name of the airline about which the individual is complaining, nature of service issue and/or individual’s disability and accommodations requested; and sex, race, color, ethnicity, religion, and/or national origin of the individual. The

individuals may provide information, not only regarding their own experiences, but on behalf of others or about other individuals related to the complaints.

The CCA system receives and is used to process these informal complaints and assist DOT in tracking statistics on flight delays, over sales, baggage problems, and consumer complaints. The system assists staff with verifying compliance with DOT's aviation consumer protection requirements, which they then use to provide information to the industry and members of the public. This information helps to record, track, and to allow DOT to take appropriate action on the complaints, opinions, information requests, and compliments pertaining to airlines, aiding in the follow-up and resolution of airline service issues. The Aviation Consumer Protection Division also uses this information to create and publish monthly reports to inform the public about airline customer service issues; to report complaint statistics to Congress and the media; to serve as a basis for rulemaking, legislation, and research; and to assist airlines in identifying and remedying consumer concerns.

This SORN makes several changes to the existing system of records. It amends the system location, system manager, categories of records in the system, record source categories, routine uses, storage, retrievability, retention and disposal, safeguards, notification procedures, exemptions, and history. It also updates the headings and order of the sections according to the new template prescribed by OMB's Circular A-108.

The Department's headquarters moved since this SORN was last published. This has been updated accordingly. The system manager and address is being changed to reflect a relocation of the Department of Transportation to a new building within the District of Columbia. The categories of records covered by the system have been revised to more clearly reflect OST

practice. The revised SORN clarifies and enumerates the specific types of information collected in the records. The revision does not make any substantive change to the categories of records. The record source categories have been updated to include electronic submission of consumer comments through the Air Travel Complaint Comment Form available online. Accordingly this brings the SORN up to date with current DOT practices without making any substantive changes to this section.

The Department is updating the routine uses of records maintained in the system. Routine uses refers to routine disclosures outside of the Department. Consequently, the Department is eliminating the routine use stating that the Department “may use information from this system of records to determine whether to further investigate or take enforcement against an air carrier or air travel company for possible violations of federal aviation civil rights and consumer protection statutes and regulations.” Although this continues to be included as one of the purposes of this system of records, this activity does not involve disclosures outside of the Department, other than those disclosures already permitted by the Privacy Act, and therefore, it not appropriately characterized as a “routine use.” The DOT also has omitted the routine use that permits disclosures to advocacy organizations when the individual provides the organization with his/her consent to access the records on his/her behalf. Disclosures with the individual’s consent are permitted by the Section (b) of the Privacy Act and, therefore, do not need to be included as a routine use. Finally, Office of Management and Budget Circular A-108 recommends that agencies include all routine uses in one notice rather than incorporating general routine uses by reference; therefore, DOT is replacing the routine use that referenced the “Statement of General Routine Uses” with all of the general routine uses that apply to this system. This is merely a

technical change and doesn't substantively affect any of the routine uses for records in this system.

The revised SORN also updates storage, retrievability, and safeguards to reflect modern standards. For instance, the storage reflects the different ways electronic records may be kept. The retrievability and safeguards have been updated to reflect the current general practice of DOT regarding systems of records.

The retention and disposal section is updated to reflect the disposition schedule that was approved by the National Archives and Records Administration in 1975. Any correspondence with individual complainants, the Department, and the airlines; reports from airlines; and the public complaints will be retained for four years. Computer printouts summarizing data from files will be destroyed when they are no longer needed for reference.

The notification procedures have been updated to account for the Department's change in address and to include the Department's web address. It has also been updated to include the procedures necessary for requesting information. The new notification section details the specific information necessary to include when requesting access to an individual's records. Accordingly there are no substantive changes to these sections.

This SORN is also updating the exemption section as discussed below. Finally, a history section has been added as required by the new standards set by the Office of Management and Budget. This updated system will be included in DOT's inventory of record systems.

## II. Privacy Act

The Privacy Act (5 U.S.C. § 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A "System of Records" is a group of any records under the control of a Federal agency from

which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them and to contest inaccurate information).

This SORN is updating the exemptions to include an exemption under 5 U.S.C. § 552a(k)(2). A Notice of Proposed Rulemaking was published on February 28, 2005 (70 FR 9607) to exempt this system from certain provisions of the Privacy Act. The Department did not receive any comments on the proposed rule. Nonetheless, given the time that has passed since the original Notice of Proposed Rulemaking, the Department will republish a notice for comment. The current SORN indicates that an exemption applies to this system, however, the Department is updating the SORN to specify the basis of the exemption under 5 U.S.C. § 552a(k)(2). An exemption from the Privacy Act's access requirement would be necessary to: protect confidential information and the sources of the confidential information; prevent unwarranted invasions of another individual's privacy; and support DOT's ability to obtain information relevant to resolving an aviation compliance concern.

As the CCA inquiry and investigative files are compiled for administrative and law enforcement purposes, the 5 U.S.C. § 552a(k)(2) exemption is applicable. The CCA assists the Department with receiving and processing allegations of violations of criminal, civil, and administrative laws and regulations relating to airline carriers and entities. The system includes investigative files and allows DOT to manage information provided during the course of its investigations, and in



the process, to facilitate its management of investigations and investigative resources. DOT employees, with appropriate privileges, can upload documents for each case for review. As the system is used to track the investigations and used to create reports about the investigations and the complaints, the system should be exempted to protect the information it contains.

In addition, it may be necessary to give an express promise to withhold the identity of an individual who has provided relevant information. Sources of information necessary to complete an effective investigation may be reluctant to provide confidential information unless they can be assured that their identities and information will not be revealed. This exemption is proposed to maintain the integrity of the investigative process and to ensure that DOT's efforts to obtain accurate and objective information will not be hindered.

This exemption will assure that the investigative files will not be disclosed inappropriately and that confidential information will be protected. The exemption is necessary to protect the information in the system that may initiate investigations or is collected during investigations. Accordingly, DOT proposes to exempt this system under paragraph (k)(2) of the Privacy act from subsection (d) (Access to Records).

In appropriate circumstances, where compliance with the request would not appear to interfere with or adversely affect the conduct of an aviation compliance inquiry or result in the unauthorized disclosure of classified information, OST may opt to waive these exemptions. In addition, some information may be available under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Any request for information from this system under the FOIA would be assessed on a case-by-case basis to determine what, if any, information could be released consistent with section (b)(2) of the Privacy Act, 5 U.S.C. § 552a(b)(2).

In accordance with 5 U.S.C. § 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

**System Name and Number:**

Department of Transportation (DOT)/Office of the Secretary (OST) DOT/OST 102 Aviation Consumer Complaint Application Online System of Records (CCA)

**Security Classification:**

Sensitive, Unclassified

**System Location:**

Records are maintained at the Office of the Secretary Headquarters in Washington, D.C. and at an offsite facility in Frederick, Maryland.

**System Manager(s):**

Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590.

**Authority for Maintenance of the System:**

49 U.S.C. 40127, 41310, 41702, 41705, and 41712

**Purpose(s) of the System:**

The purpose of this system is to monitor complaint records of individual airlines and air travel companies; to determine the extent to which these entities are in compliance with Federal aviation civil rights and consumer protection regulations; to report complaint statistics to Congress, the media, and the general public; to serve as a basis for rulemaking, legislation, and research; and to assist airlines in identifying and remedying consumer concerns.

**Categories of Individuals Covered by the System:**

The system contains information on individuals who have filed air travel service complaints or other inquiries with the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings regarding an air carrier and/or air travel company. There may also be information in the system regarding individuals who file complaints on behalf of others or individuals who are related to the complaints.

### **Categories of Records in the System:**

Categories of records in this system include:

- Name
- Home address
- Business address
- Telephone number(s)
- Email address
- Name of the airline or company about which the individual is complaining
- Flight date
- Flight number
- Reservation number
- Origin of the flight
- Destination city of trip
- Nature of service issue and/or individual's disability and accommodations requested
- Sex, race, color, ethnicity, religion, and/or national origin of the individual

### **Record Source Categories:**

Information contained in this system is provided by individuals, or on behalf of individuals, through telephone calls, emails, and written correspondence received by the Department of

Transportation or through electronic submission using the Air Travel Complaint Comment Form available online.

**Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:**

In addition to those disclosures generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. § 552a(b)(3) as follows:

1. To authorized representatives of the United States Government or a U.S. or foreign air carrier or air travel company about whom the complaint or record concerns for purposes of improving customer service.
2. To the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of implementing, investigating, prosecuting, or enforcing a statute, regulation, rule or order, when a record in this system indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, including any records from this system relevant to the implementation, investigation, prosecution, or enforcement of the statute, regulation, rule, or order that was or may have been violated;
3. To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary for DOT to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit;
4. To a Federal agency, upon its request, in connection with the requesting Federal agency's hiring or retention of an employee, the issuance of a security clearance, the reporting of

an investigation or an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information requested is relevant and necessary to the requesting agency's decision on the matter;

5. To the Department of Justice, or any other Federal agency conducting litigation, when (a) DOT, (b) any DOT employee, in his/her official capacity, or in his/her individual capacity if the Department of Justice has agreed to represent the employee, or (c) the United States or any agency thereof, is a party to litigation or has an interest in litigation, and DOT determines that the use of the records by the Department of Justice or other Federal agency conducting the litigation is relevant and necessary to the litigation; provided, however, that DOT determines, in each case, that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.
6. To parties in proceedings before any court or adjudicative or administrative body before which DOT appears when (a) DOT, (b) any DOT employee in his or her official capacity, or in his or her individual capacity where DOT has agreed to represent the employee, or (c) the United States or any agency thereof is a party to litigation or has an interest in the proceeding, and DOT determined that is relevant and necessary to the proceeding; provided, however, that DOT determines, in each case, that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.
7. To the Office of Management and Budget (OMB) in connection with the review of privacy relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process set forth in that Circular.

8. To the National Archives and Records Administration for an inspection under 44 U.S.C. 2904 and 2906.
9. To another agency or instrumentality of any government jurisdiction for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims; however, this routine use only permits the disclosure of names pursuant to a computer matching program that otherwise complies with the requirements of the Privacy Act.
10. To appropriate agencies, entities, and persons, when (1) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or not) that rely on the compromised information; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
11. To the Office of Government Information Services (OGIS) for the purpose of resolving disputes between requesters seeking information under the Freedom of Information Act (FOIA) and DOT, or OGIS' review of DOT's policies, procedures, and compliance with FOIA.
12. To DOT's contractors and their agents, DOT's experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

13. To an agency, organization, or individual for the purpose of performing an audit or oversight related to this system or records, provided that DOT determines the records are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.
14. To a Federal, State, local, tribal, foreign government, or multinational agency, either in response to a request or upon DOT's initiative, terrorism information (6 U.S.C. 485(a)(5), homeland security information (6 U.S.C. 482(f)(1), or law enforcement information (Guideline 2, report attached to White House Memorandum, "Information Sharing Environment," Nov. 22, 2006), when DOT finds that disclosure of the record is necessary and relevant to detect, prevent, disrupt, preempt, or mitigate the effects of terrorist activities against the territory, people, and interests of the United States, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-456, and Executive Order 13388 (Oct. 25, 2005).

**Policies and Practices for Storage of Records in the System:**

Records in this system are stored electronically and/or on paper in secure facilities. Electronic records may be stored on magnetic disc, tape, digital media, and CD-ROM.

**Policies and Practices for Retrieval of Records:**

Electronic records may be retrieved by consumer's name, record number, case/project name. Paper records may be retrieved by name of air carrier about which the record concerns.

**Policies and Practices for Retention and Disposal of Records:**

Records will be retained in accordance with NC-197-76-1, July 5, 1975, Item Number 20. The public complaints; reports from the airlines; and any correspondence regarding the complaints with individual complainants, the Department, and airlines will be destroyed after four years.

Computer printouts summarizing data from the files will be destroyed when they are no longer needed for business purposes.

**Administrative, Technical, and Physical Safeguards:**

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

**Record Access Procedures:**

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Office of the Secretary FOIA officer, whose contact information can be found at

*<http://www.transportation.gov/individuals/foia/office-secretary-foia-information>* under “Contact

Us.” If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Departmental Freedom of Information Act Office, U.S. Department of Transportation, Room W94-122, 1200 New Jersey Ave., SE., Washington, D.C. 20590, ATTN: FOIA request.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR Part 10. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be



made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Freedom of Information Act Officer, <http://www.dot.gov/foia> or 202.366.4542. In addition you should provide the following:

An explanation of why you believe the Department would have information on you;

- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records. Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**Contesting Record Procedures:**

See “Records Access Procedures” above.

**Notification Procedures:**

See “Records Access Procedures” above.

**Exemptions Promulgated for the System:**

Pursuant to 5 U.S.C. § 552a(k)(2), this system is exempt from 5 U.S.C. § 552a(d).

**History**

70 FR 9436, February 25, 2005

Issued in Washington, DC on February 4, 2019.

**Claire W. Barrett,**

*Departmental Chief Privacy Officer.*

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